

OVERSIGHT OF FEDERAL ENVIRONMENTAL PROGRAMS IMPLEMENTED BY STATES & TRIBES

ISSUE SUMMARY

The [2018-2022 EPA Strategic Plan](#) identified “More Effective Partnerships” as a fundamental priority for the agency with a stated objective to enhance shared accountability between the EPA, state, local and tribal co-regulators in the implementation of federal environmental programs. To address one key aspect of this shared accountability, the [Agency Reform Plan](#) on Tailoring State Oversight included steps to establish a comprehensive approach to evaluate co-regulator implementation of federal programs to “help states maintain strong performance and ensure a level playing field.” To this end, the agency is developing: a policy outlining a clear and consistent process for the elevation of issues, a policy for its oversight of permits and permitting programs, and metrics to ensure the agency’s standards for programs implemented by states, tribes, and EPA are consistently applied.

BACKGROUND

Recognizing states are best positioned to evaluate and respond to environmental conditions within their jurisdictions, Congress, in the environmental statutes, granted states the authority to take on implementation and enforcement responsibilities for many of the federal environmental programs (contingent upon state-specific authorizing legislation and assurance of adequate funding to run these programs). Over the past four decades, states and tribes have availed themselves of those provisions, with over 90% of EPA’s delegable programs managed by state agencies,¹ and many more implemented by tribal agencies. While these state and tribal entities are responsible for implementation and enforcement of federal programs, EPA remains accountable to Congress, the President, and the public to ensure federal statutes are consistently implemented and enforced.

Since 2007, the U.S. Government Accountability Office (GAO)² and the EPA Office of the Inspector General (OIG) have identified EPA’s oversight of federal programs implemented by states and tribes (including permitting, enforcement, drinking water, and others) as an agency challenge.³ This topic is particularly sensitive for states and tribes. State and tribal governments struggle with declining resources, political pressures, and other factors that hinder them from meeting their responsibilities. States and tribes recognize the importance of EPA’s oversight function but want to be sure EPA efforts are efficient and effective. EPA seeks to find the right balance between offering guidance and flexibility, while acknowledging challenges associated with its own resource limitations.

EPA, in its 2018-2022 EPA Strategic Plan, identified More Effective Partnerships (Goal 2) as a fundamental priority with a stated objective to enhance shared accountability between EPA, state, tribal, and local co-regulators in the implementation of federal programs. To address this challenge, in FY18, EPA surveyed its Regions to understand what specific oversight activities they performed. Resulting data showed activities ranged from technical assistance

¹ The Environmental Council of the States, “[State Delegation of Environmental Acts](#),” February 12, 2016.

² GAO Report, “[EPA–State Enforcement Partnership Has Improved, but EPA’s Oversight Needs Further Improvement](#),” GAO-07-883, July 31, 2007.

³ See EPA Office of Inspector General – Key Management Challenges for EPA at <https://www.epa.gov/office-inspector-general/key-management-challenges-epa-and-csb>

to statutorily required reviews, and that the agency was not consistently applying oversight activities from state to state or across Regions. This lack of a comprehensive system for oversight of programs implemented by states and tribes led to the development of a Principles memo,⁴ which underscored basic tenets of oversight, including deference to states, effective communication, clear standards of review, and a process to elevate issues. Subsequent discussions with state environmental leaders led to increased focus on the elevation aspect of these principles; the agency is currently drafting an elevation policy that will provide a clear and transparent process for settling disputes between state or tribal leaders and their EPA Regional counterparts.

Because the primary functions states and tribes perform on behalf of the EPA are permitting and enforcement, the agency took a closer look at how oversight of these activities was managed. While enforcement oversight of select environmental programs is implemented through the State Review Framework, no comprehensive oversight framework exists for permitting programs. The agency is currently finalizing a National Permitting Oversight Policy and corresponding metrics, which will create a consistent and transparent data-driven framework to guide EPA's oversight activities, inform adjustments in oversight, and inform National Program workplans.

Meanwhile, EPA is also looking at how it performs implementing programs directly (e.g., in Indian country and in states that do not have delegated authority). EPA direct implementation in Indian country presents challenges because of the unique status of tribal nations coupled with the fact that many tribes face economic and technical capacity challenges that make it difficult to achieve and sustain compliance.

MOVING FORWARD

- EPA is drafting an elevation policy to address the need for a timely and consistent approach to decision-making.
- The agency will finalize and deploy its National Permitting Oversight Policy in FY21, with a goal of 100% implementation by the end of FY22.
- A cross-agency workgroup focused on EPA's direct implementation responsibilities in Indian country is working across programs to establish performance standards. The group is also collaborating with OECA to adapt the State Review Framework metrics to evaluate regional compliance monitoring and enforcement in Indian country direct implementation, and with OMS to improve the quality of tribal direct implementation data in EPA databases.

LEAD OFFICE/REGION: OCIR, OITA

OTHER KEY OFFICES/REGIONS: OAR, OCSP, OECA, OGC, OLEM, OW, R4, R7, R8, R9

⁴ See Memorandum from Andrew R. Wheeler, Acting Administrator, Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes. Oct. 30, 2018.